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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board of Counseling, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC115-30 18VAC115-40
<b>Regulation title(s)</b>	Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants Regulations Governing the Certification of Rehabilitation Counselors
<b>Action title</b>	Periodic Review
<b>Date this document prepared</b>	5/7/15

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The proposed fast-track action will delete obsolete provisions, clarify regulations, and specify submission of a national practitioner databank report for applicants for certification. There are no substantive changes.

### Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

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CSAC = certified substance abuse counselor

NPDB = National Practitioner Databank of the U. S. Department of Health and Human Services Data Bank

### Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

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On May 1, 2015, the Board of Counseling took action to amend 18VAC115-30-10 et seq., Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants, and 18VAC115-40-10 et seq., Regulations Governing the Certification of Rehabilitation Counselors.

### Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system:

***§ 54.1-2400 -General powers and duties of health regulatory boards***

*The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

The specific authority for the promulgation of regulations for counseling-related professions is found in Section 54.1-3505 of the Code of Virginia:

§ 54.1-3505. *Specific powers and duties of the Board.*

*In addition to the powers granted in § [54.1-2400](#), the Board shall have the following specific powers and duties:*

1. *To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*

2. *To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*

3. *To designate specialties within the profession.*

4. *To administer the certification of rehabilitation providers pursuant to Article 2 (§ [54.1-3510](#) et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.*

5. *Expired.*

6. *To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.*

7. *To promulgate, subject to the requirements of Article 1.1 (§ [54.1-3507](#) et seq.) of this chapter, regulations for the qualifications, education, and experience for licensure of licensed substance abuse treatment practitioners and certification of certified substance abuse counselors and certified substance abuse counseling assistants. The requirements for membership in NAADAC: the Association for Addiction Professionals and its national examination may be considered by the Board in the promulgation of these regulations. The Board also may provide for the consideration and use of the accreditation and examination services offered by the Substance Abuse Certification Alliance of Virginia. The educational credit hour, clinical experience hour,*

*and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors. Such regulations also shall establish standards and protocols for the clinical supervision of certified substance abuse counselors and the supervision or direction of certified substance abuse counseling assistants, and reasonable access to the persons providing that supervision or direction in settings other than a licensed facility.*

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of the regulatory action is to fulfill the requirement for a periodic review of regulations to ensure that they are clearly written and necessary to protect the public. The addition of a requirement for submission of a NPDB report as part of the application process is intended to ensure that the Board has sufficient information about any disciplinary history and criminal activity in order to make a decision on certification that will protect the health, safety and welfare of persons receiving substance abuse or rehabilitation services by certificate holders in Virginia.

### Rationale for using fast-track process

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

The action is clarifying in nature and has unanimous approval of the Board of Counseling. The Board does not expect it to be controversial.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.*

Other than the submission of a NPDB report by applicants for certification, there are no substantive changes in this action.

### Issues

*Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of*

*implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

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- 1) There are no disadvantages to the public. Inclusion of a requirement for applicants to submit a report from the NPDB may provide additional protection for persons who are receiving substance abuse or rehabilitation services in the Commonwealth.
- 2) There are no particular advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent matters of interest.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There are no localities particularly affected.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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The Board of Counseling has a statutory mandate to certify and regulate substance abuse counselors, substance abuse counseling assistants and rehabilitation providers. There are no

alternative regulatory methods, such as reporting requirements or schedules or performance standards.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur no costs for electronic notifications to the Public Participation Guidelines. There are no on-going expenditures relating these amendments to regulations.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There are no costs to localities.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>The individuals affected by a change in regulation (requirement for NPDB report) would be applicants for certification.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that:  a) is independently owned and operated and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>For rehabilitation counselors, there are less than 5 applicants per year   For CSAC certification, there are approximately 100 to 125 applicants per year.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b>  <b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>Costs for affected individuals would be \$3 for a NPDB report to be sent to the Board.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The benefit is public safety with additional assurance that persons certified to provide substance abuse or rehabilitation counseling have not had disciplinary action based on unprofessional conduct or criminal history.</p>

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The amendments adopted are generally clarifying in nature. The Board currently requests a NPDB report, but this action will make that a requirement for the applicant to request the report. As regulations are being amended (already proposed for the three licensed professions under Counseling), the requirement is being included as part of the application process.

### Public participation notice

*If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

### Periodic review and small business impact review report of findings

*If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

Commenter	Comment	Agency response
Eleanor Fukushima, President of IARP Virginia	Recommends acceptance of a new examination for rehabilitation counselors – the Associate Disability Management Specialist (ADMS) examination	Current regulations allow certification of rehabilitation providers based on an examination approved by the Board. The Board has adopted a guidance document to deem passage of the ADMS examination as acceptable to qualify an applicant for certification.

- 1) The Board has determined a continued need for the regulation, consistent with its licensing responsibility and with the powers granted in § [54.1-2400](#). Additionally, § 54.1-3505 grants the Board the following specific power and duty to “cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.”



- 2) Recommendations of the Board conducting the periodic review include changes to make the regulation more consistent and clearer for applicants and licensees.
- 3) There is no overlap with federal or state law or regulation; the Virginia Board has sole authority to regulate the profession.
- 4) Regulations found in Chapter 30 were last reviewed in 2008 with final amendments becoming effective in 2009; there have been three minor revisions to regulations since that review. Chapter 40 was reviewed in 2003, but the stage was withdrawn prior to completion of regulatory action; it has had five minor revisions since that review.
- 5) Amendments to regulation may avoid the unintended consequence now experienced by some substance abuse applicants who expend time and money obtaining supervised experience that does not qualify them for certification.

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

There is no impact of this action on the institution of the family and family stability.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

#### Chapter 30 – Substance abuse counselors

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
30	Sets out fees charged to applicants and certificate holders	Elimination of one-time renewal fees due on June 30, 2010 <i>Intent is to remove obsolete language.</i>
40	Sets out the prerequisites for certification by examination	Subsection B 2 f is amended to clarify that the Board requires documentation of a “health or mental health” license or certificate held in another jurisdiction - rather than any “professional” license, which could be interpreted as a cosmetology license.  Subsection B 2 g is added to require a current report from NPDB. <i>The intent is public protection. While the Board requests information on disciplinary actions, no all</i>



		<i>applicants are forthcoming about certificates or licenses held in other states. A NPDB report will inform the Board about disciplinary actions taken as a result of unprofessional conduct or criminal convictions.</i>
45	Sets out the prerequisites for certification by endorsement	Identical amendments to this section as those in section 40
60	Sets out the experience requirements for substance abuse counselors	The amendment is clarifying only.

Chapter 40 – Rehabilitation providers

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
	Sets out fees charged to applicants and certificate holders	Elimination of one-time renewal fees due on June 30, 2010 <i>Intent is to remove obsolete language.</i>
20	Sets out fees charged to applicants and certificate holders	Elimination of one-time renewal fees due on June 30, 2010 <i>Intent is to remove obsolete language.</i>
25	Sets out the application process for certification	The amendment will require applicants to submit a current report from NPDB. <i>The intent is public protection. While the Board requests information on disciplinary actions, no all applicants are forthcoming about certificates or licenses held in other states. A NPDB report will inform the Board about disciplinary actions taken as a result of unprofessional conduct or criminal convictions.</i>
28	Sets out the general examination requirements	Subsection B is eliminated because the Board no longer gives a certification examination.